IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.253 of 2006
SANJAY SHARMA
Versus
THE STATE OF BIHAR & ANR
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8. 22.8.2008. This application has been filed for setting aside the order dated 20.12.2005 passed by Sri P. C. Anal, Judicial Magistrate, Ist Class, Patna in Complaint Case No. 1747(C) of 2002 thereby the petition dated 12.9.2005 filed by the petitioner for recall of the process has been rejected.

Heard the learned counsel for the petitioner. No one appears on behalf of the opposite party no.2 in spite of valid service of notice.

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It is submitted on behalf of the petitioner that the court below has not properly appreciated the facts and has wrongly rejected the petition dated 12.9.2005. It is further submitted that the name of this petitioner does not appear in the protest petition. Cognizance was also not taken against this petitioner but in spite of that the process has been issued against him on the presumption that in place of name of this petitioner, name of one Saryug Sharma has wrongly been mentioned in protest-cum-complaint petition.

Considered the submission and perused the impugned order as also protest petition and cognizance

order.

Having regard to the facts and circumstances, this application is allowed. The impugned order dated 20.12.2005 is set aside and process issued against the petitioner is hereby recalled. However, this will not preclude the prosecution to seek appropriate remedy at the stage of trial under Section 319 Cr.P.C.

(Ghanshyam Prasad)

N.H./

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